whether such confiscation is warranted, or if and when the press card is to be returned.

26. Each of these categories of violations, considered separately and together as a whole, demonstrates the existence of a policy, custom, and practice of the NYPD and the City which is contrary to the NYPD Media Guidelines and violates the rights of Plaintiffs and other members of the press under the First and Fourteenth Amendments of the United States Constitution and under article I, section 8 of the Constitution of the State of New York. Specific instances of such violations are recounted below.

THE NYPD'S PRACTICE OF PHYSICALLY BLOCKING CAMERAS

27. Police interference with photographers and reporters associated with Plaintiffs and other news agencies has become commonplace in recent years. Police Officers regularly block camera lenses and/or photographers' or camerapersons' view of the scene of a crime, fire, accident, or demonstration, even when there is no threat to public safety and the photographers and camerapersons are not interfering with the NYPD's law enforcement function in any way. The following incidents are examples of such misconduct:

(a) On or about October 17, 1998, New York Times photographer Nancy Siesel waited at the entrance of City Hall in Manhattan to get pictures of baseball player Sammy Sosa at a parade given in Mr. Sosa's honor. As Mr. Sosa's float approached, NYPD officers surrounded Mr. Sosa and deliberately blocked Ms. Siesel from taking Mr. Sosa's photograph, raising their arms to block her line of sight and physically pushing Ms. Siesel out of the way. Ms. Siesel was also pushed by defendant Giuliani's Press Aid Manny [insert last name], who told Ms. Siesel to "get the [expletive] out of the way," because she had already taken enough pictures along the parade route.

(b) On or about October 11, 1998, at the Hispanic Columbus Day Parade in New York City, NYPD officers, without provocation, pushed and physically blocked Daily News photographer David Handschuh and other photographers from the New York Post and UPI as they were attempting to get photographs of Antonio Banderas and Melanie Griffith. The photographers did nothing to pose a security risk in any way and did nothing to interfere with the police officers' job of keeping the parade safe and orderly.

(c) On or about March 17, 1998, at the St. Patrick's Day parade in New York City, an NYPD officer pushed WNBC cameraman Carmine Aloiso and covered his camera lens, as Mr. Aloiso and New York Press Club President and WNBC reporter Gabe Pressman tried to tape the arrest of a group of protesters. Neither Mr. Aloiso nor Mr. Pressman was doing anything to interfere with the work of the police or to endanger anyone.

(d) On or about December 5, 1997, an NYPD officer blocked the camera lens of Daily News reporter Robert Spenser, as Mr. Spenser was trying to take pictures at the scene of a subway brawl and stabbing. Mr. Spenser was not endangering anyone by attempting to take photographs of the scene and was not disrupting the work of the police in any way.

(e) On or about May 25, 1997, Daily News photographer Susan Watts arrived at the scene of a subway suicide at the 34th Street station for the No. 1 train in Manhattan. Ms. Watts, along with photographers from the New York Post and the V & P News Service, was taking pictures of the scene from a separate platform across the tracks from where emergency workers were located. As a small crowd of civilians started to develop around the photographers to observe the scene, NYPD Officer Reed (Shield No. 10486) and one other officer started pushing everyone back while telling the photographers, "We don't want this photographed," and "Do not shoot this!" Officer Reed then declared that the NYPD was "clearing all civilians from the scene." Ms. Watts and the other photographers showed the officers their press cards and explained that they were working press and not bystanders. The officers responded by physically pushing Ms. Watts and the other photographers away and blocking their cameras. When Ms. Watts asked Officer Reed to speak to his commanding officer, he abruptly told her to find him herself.

(f) On or about March 12, 1997, Daily News photographer Jon Naso and New York Post photographer Luiz C. Ribeiro were both covering the arrival of the casket of slain rap singer Biggie Smalls (The Notorious B.I.G.). The corpse was being dropped off for preparation, and as there was no service scheduled, there were no family members present. At the request of NYPD Officer Murray of the Department of Public Information, Messrs. Naso and Ribeiro agreed to position themselves on the north side of East 81st Street in Manhattan, approximately 50 feet west of Madison Avenue, where they were told by Officer Murray they could observe and photograph the arrival of the casket. When the casket arrived, a Lt. O'Connor of the NYPD, who was standing between the hearse and the photographers, ordered three police officers who were posted on the south side of East 81st Street to cross the street and stand shoulder to shoulder with their backs to the photographers in order to block the photographers' view of the casket. Neither Mr. Naso nor Mr. Ribeiro was able to get a photo of the arrival of the hearse.

(g) On or about March 2, 1997, Daily News photographer David Handschuh arrived at the scene of a car accident on the Northbound Henry Hudson Parkway, approximately 50 feet north of the entrance on W. 158th Street. Mr. Handschuh attempted to take photographs of the accident from more than 50 feet away from the scene, so that he would not interfere with the emergency workers' job. Mr. Handschuh was not able to photograph the scene, however, because Sgt. Wilcox of the 33rd Precinct of the NYPD (Shield No. 2149) instructed another Police Officer (Shield No. 24421) to block Mr. Handschuh's view of the accident scene. The second officer completely blocked Mr. Handschuh's view, while stating, "I'm not going to let you take photos of that injured woman," and asking "Didn't you get enough blood today?"

(h) On or about February 23, 1997, WCBS-TV cameraman Barry Weiss and other members of the press stood outside the Empire State Building in Manhattan in an attempt to get pictures of gunshot victims being brought down from the Empire State Building onto Fifth Avenue. As the victims were brought out into the street, the Police stood in front of Mr. Weiss' camera and blocked him from getting pictures. Mr. Weiss tried moving to the left and to the right, but the Police Officers moved with him in order to block his view. When Mr. Weiss tried other vantage points, one of the Police Officers put his hand over Mr. Weiss' camera lens. At no point was Mr. Weiss interfering with the police or medics in any way. The Police eventually forced Mr. Weiss and the other members of the press into a designated "pen" from which they could not see anything.

(i) On or about August 23, 1996, Daily News photographer Susan Watts approached the scene of a double murder on Overlook Terrace, between 187th and 189th Streets in Manhattan. As soon as Manhattan Homicide Task Force Detective O'Callaghan saw her cameras, he ordered Ms. Watts to leave the scene immediately, even though she had not crossed any police lines and was not interfering with the police investigation. Detective O'Callaghan threatened to take Ms. Watts' press card if she took any photographs and told Ms. Watts that it did not matter that she was on a public street. Ms. Watts called Detective Mark Patterson of the Office of the Deputy Commissioner of Public Information (the "DCPI") on her cellular phone and received assurances from Detective Patterson that she had every right to photograph the scene and that he would ensure the return of her press card if anyone tried to stop her from doing so. In light of these assurances, Ms. Watts began to photograph the crime scene. As soon as Ms. Watts started to take photos of the scene, Detective O'Callaghan instructed the police officers at the scene to block Ms. Watts' view. At the direction of Detective O'Callaghan, the police officers lined up in front of Ms. Watts' camera and prevented her from taking photographs of the crime scene.

(j) On or about July 8, 1996, Daily News photographer Susan Watts was photographing the scene of a car accident at 60th Street and Madison Avenue in Manhattan. Ms. Watts was standing a considerable distance away from the accident as to avoid interfering with the medics tending to struck pedestrians. As Ms. Watts was photographing the scene, Police Officer Rawdon of the 19th precinct of the NYPD charged at her, grabbed the lens of her camera, and covered it while she was attempting to take more photographs. While his hand was covering Ms. Watts' camera lens, Officer Rawdon shouted, "Get the [expletive] out of here! Get the [expletive] back!" When Ms. Watts attempted to explain to Officer Rawdon that she was simply doing her job, Officer Rawdon responded by screaming "I don't give a [expletive]!" Ms. Watts eventually got her camera loose from Officer Rawdon's grip and photographed him. After he realized that he had been photographed, Officer Rawdon finally walked away and left Ms. Watts alone.

28. The foregoing conduct by the NYPD, as illustrated by the above examples, is contrary to the NYPD Media Guidelines' requirement that police officers "will NOT interfere with the video taping or the photographing of incidents in public places. Intentional interference such as blocking or obstructing cameras or harassing the photographer constitutes censorship." (NYPD Media Guidelines at 2) (emphasis in original) It is also inconsistent with the First Amendment and New York State Constitution.

THE NYPD'S USE OF THE PRESS "PENS" AND SIMILAR RESTRICTIONS

29. The NYPD regularly confines photographers, camerapersons, and other members of the press to pens or other areas from which they cannot even see, let alone take pictures of, the newsworthy events they are attempting to cover. The

NYPD engages in this practice even when there is no threat to public safety and the photographers and camerapersons and not interfering with the NYPD's law enforcement function in any way. The following incidents are examples of such misconduct:

(a) On or about February 24, 1999, New York Times photographer Jim Estrin covered a demonstration concerning the fatal police shooting of immigrant Ahmed Diallo at the Bronx County Courthouse at 161st Street and Grand Concourse. The demonstrators were kept behind barricades in front of the courthouse, and the sidewalk in front of the courthouse and the stairs of the courthouse were empty except for NYPD officers. The press pen was set up inside the demonstration area in such a way that the press could not see the front of the demonstrators. When the demonstrators faced the speakers, their backs were to the photographers. Mr. Estrin and other members of the press were not permitted to take photos from outside of the pen, which failed to provide meaningful access to the event. The sidewalk and stairs -- which were in a good position to see the demonstrators -- remained empty.

(b) On or about February 1, 1999, Daily News photographer David Handschuh, Daily News staff writer Rafael Olmeda, and camera crews from WCBS, WNBC, WABC, WWOR, and

WPIX were at Baychester Avenue in the Bronx covering the aftermath of a fire. After the fire had been extinguished for some time and all of the victims had been removed from the scene, for no apparent reason, NYPD officers forced all of the members of the press to move from where they were standing -- which was already approximately 100 feet away from the building. The officers moved the reporters, photographers, and camera crews down the block and onto the sidewalk behind a fire truck, where they could not see the fire scene at all. The officers then marked off this area as the press "pen" by roping it off with crime-scene tape and stood alongside the area to prevent the members of the press from leaving.

(c) On or about November 9, 1997, Daily News photographer David Handschuh was removed by NYPD officers from a private residence near the scene of a disaster drill, despite the fact that Mr. Handschuh had the consent of the owner and was doing nothing disruptive. The officers ordered Mr. Handschuh to move to a press pen which they had set up around the corner, from which there was no visual access to the scene.

(d) On or about May 1, 1997, Daily News photographer Budd Williams, AP photographer ________ Karp, New York Post photographer Wilbur Funches, New York Times photographer John Sotomeyer, and others were at the corner of Longfellow Avenue and 165th Street in the Bronx at the scene of a homemade bomb explosion. The NYPD officers corralled the photographers into press pens on the sidewalk, which were far away from the scene. The photographers were not permitted to leave the pens, and their view of the scene was obstructed by the officers and firemen. The officers progressively moved the photographers' pen further and further away from the scene until they could not see anything. Only a few photographers and camerapersons, who were selected by the officers, were permitted to leave the pen and take unobstructed photos of the scene.

(e) On or about January 14, 1997, at the scene of a murder of a cab driver at the corner of 30th Street and Third Avenue in Manhattan, a DCPI officer placed Daily News photographer Jim Hughes and other members of the press in a poorly situated pen and then had an NYPD van move in front of the pen to further obstruct their view. None of the photographers were interfering with the police investigation in any way. [Note: Confirm correct location. Compare 2/4/97 Press Club letter to Safir with entry #40 in 4/21/99 memo.]

(f) On or about July 16, 1996, on the Northeast corner of Broadway and West 102nd Street in Manhattan, Daily News photographer David Handschuh and a WABC cameraman were forcibly removed by NYPD Sgt. DiBennedetto of the 34th Precinct from a donut shop across the street from where a man barricaded himself in the basement of a store, despite the fact that Mr. Handschuh and the cameraman had the permission of the donut shop employees to be there. Sgt. DiBennedetto told Mr. Handschuh that he was removing him and the cameraman "for their own safety." Upon information and belief, members of the general public were permitted to stay in the donut shop. Sgt. DiBennedetto forced Mr. Handschuh and the cameraman to stay in a press pen, which was more than a block away from the crime scene and provided no visual access to the scene at all.

(g) On or about June 12, 1996, Daily News photographer David Handschuh and WABC cameraperson Barbara LaPorre were denied access to a fire scene in Chinatown by NYPD Sgt. Beckman of the 5th Precinct. Despite the fact that both Mr. Handschuh and Ms. LaPorre had press cards that entitled them to cross police and fire lines and that Mr. Handschuh is an honorary New York City Fire Department ("FDNY") officer with the ability to cross fire lines. Sgt. Beckman ordered them and other media representatives to stay away from the fire scene at a place where they could not see or photograph it.

(h) On or about May 29, 1996, *Daily News* photographer Gerald Herbert was covering a three-alarm fire on West 53rd Street in Manhattan. Mr. Herbert was standing well back from the scene of the fire, with several FDNY officers, who did not object to his presence. Although the FDNY officers had no complaints and Mr. Herbert was nowhere near the firefighters, two NYPD officers told him to leave because he was obstructing the firefighters. The officers then told him that he had to leave because of the threat of fumes, even though the FDNY officers standing near him were not wearing masks and had cited no safety reason for removing Mr. Herbert. The police officers threatened to take Mr. Herbert's press card and then physically removed him to a spot from which he could not get any photographs of the scene.

30. The foregoing conduct by the NYPD, as illustrated by the above examples, is contrary to the NYPD Media Guidelines' acknowledgment that "Working Press Cards clearly state, the bearer 'is entitled to cross police and fire lines.' This right will be honored and access will NOT be denied." (NYPD Media Guidelines at 2) (emphasis in original). It is also

inconsistent with the First Amendment and the New York State Constitution.

CONFINING THE PRESS TO "PENS" WHILE PERMITTING THE GENERAL PUBLIC FULL ACCESS TO THE SCENE

31. While the NYPD Media Guidelines provide that the media should be granted more access to crime, fire, accident, and emergency scenes than the general public, in recent years the NYPD has regularly discriminated against the press by confining photographers, camerapersons, and other members of the press to pens or other areas from which they have limited access to a newsworthy event, while providing the public with full access to the scene. The NYPD engages in this practice even when there is no threat to public safety and the photographers and camerapersons were not interfering with the NYPD's law enforcement function in any way. The following incidents are examples of such misconduct:

(a) On or about [insert date], New York Times photographer Eddie Keating went with Syracuse University graduate student and New York Times intern, Eddie Holtston, to Times Square in Manhattan to cover a story concerning billboards being blown off of Times Square buildings, which forced the NYPD to close Times Square to vehicular traffic. When they arrived on the scene, Messrs.

Keating and Holtston attempted to cross 42nd Street to get a good view of what was happening at the scene. After producing his press pass for a police officer, Mr. Keating was told the press was restricted to the side of the street that he was already on. Forced to stay within this restricted area, Mr. Keating instructed Mr. Holtston -- who did not have official press credentials -- to cross the street in order to get a better shot. The young intern followed Mr. Keating's advice and while crossing the street took a photograph of a large piece of the billboard being blown from the side of the building, showing police officers trying to keep it from striking anyone. Given the location of the press pen, Mr. Keating was unable to get a good photo. The intern's photograph ran on the front page of The New York Times.

(b) On or about [insert date], New York Times photographer Andrea Mohin was covering a raid by the FBI/NYPD Terrorism Task Force of a "bomb factory" on Fourth Avenue in Brooklyn. The NYPD kept all photographers behind a cordon that was approximately two and one-half blocks away. The police permitted the general public, however, to walk within a block of the scene. Given the lack of access to the scene, Ms. Mohin sought and obtained permission from a nearby resident to get up on the roof of his building which provided an excellent vantage point from which to take photos. While Ms. Mohin was up on the roof, an NYPD officer spotted her and physically came up to the roof and escorted her down. Residents of the apartment building were permitted to remain on the premises and were not asked to leave for safety reasons.

(c) On or about March 18, 1999, New York Times reporter Nancy Siesel, Daily News photographer David Handschuh, and other members of the press were covering a public protest, led by Rev. Al Sharpton and held at One Police Plaza in Manhattan, concerning the fatal police shooting of immigrant Ahmed Diallo. The NYPD set up a pen for the press and refused to allow Ms. Siesel or Mr. Handschuh to remain with the public outside of the pen, even though the public's view of the demonstration was better outside the pen than the press' view was from within. In another incident during the Diallo protests, a police officer actually grabbed Newsday reporter Graham Raymond from behind and pushed him into a pen.

(d) On or about January 17, 1999, Daily News photographer Jon Naso was attempting to cover a religious ceremony in Battery Park when the NYPD officer forced him to stand behind other members of the press in a designated pen. The general public had a better view of the ceremony than the press did from the designated area.

(e) On or about November 1, 1998, at the start of the New York City Marathon, an NYPD Deputy Inspector allowed the family members of NYPD officers to cross the Verrazano Bridge on-ramp but prevented Daily News photographer Bill Turnbull and a photographer from The New York Times from doing so.

(f) On or about March 27, 1997, WCBS cameraman Ricardo Sanchez was attempting to get footage of an extinguished fire at the intersection of Sedgewick Avenue and Kingsbridge Street (in Bronx?) when two NYPD Sergeants ordered him to go across the street. Mr. Sanchez pointed out that civilians were walking by the extinguished fire and standing even closer to it than he was. The officers told Mr. Sanchez "not to give them a hard time" and insisted that he move. Mr. Sanchez reluctantly obeyed their orders, while the civilians were permitted to stay near the extinguished fire.

(g) On or about March 14, 1997, WCBS cameraman Daniel Smyksy was stationed in front of the home of Bill Cosby at 18 East 71st Street in Manhattan to cover a story on the murder of Mr. Cosby's son. An NYPD officer from the 19th Precinct threatened to arrest Mr. Smyksy and other members of the press if they set up their equipment in the street in front of Mr. Cosby's house. At the same time and thereafter, the general public was permitted to stand in the area placed off-limits to the media, which provided a better view of the scene.

(h) On or about January 1, 1997, a Newsday reporter [confirm identity] and the other members of the press sought to report on a crime scene at 347 20th Street in Sunset Park, Brooklyn, where a man shot his wife and three daughters. NYPD officers set up a press pen a block away from the crime scene, though continued to allow the public to cross back and forth in front of the scene.

(i) On or about June 11, 1996, Daily News photographer David Handschuh, AP photographer Kathy Willens, and other members of the press were denied access by NYPD Lt. Klev of the 19th Precinct to all of Park Avenue between East 88th Street and East 89th Street in Manhattan, which was the scene of a homicide earlier that day. The general public was permitted full access to the street.

(j) On or about June 6, 1996, Daily News photographer Ken Murray was ordered by an NYPD Manhattan North Patrol Sergeant not to take photographs of a crime scene in

Central Park, even though cyclists and pedestrians were permitted access to the same area from which Mr. Murray was prohibited to take photographs. A patrol car was assigned to watch Mr. Murray to ensure that he did not take any pictures.

(k) On or about May 23, 1996, NYPD officers forced Daily News photographer David Handschuh to stand farther back than the general public from the scene of a car accident on the 59th Street Bridge and threatened to take Mr. Handschuh's press pass if he shot any photographs. Mr. Handschuh was doing nothing to disrupt the police or prevent emergency workers from doing their jobs.

32. The foregoing conduct by the NYPD, as illustrated by the above examples, is contrary to the NYPD Media Guidelines and inconsistent with the First Amendment and New York State Constitution.

ARBITRARILY CONFISCATING AND/OR THREATENING TO CONFISCATE PRESS PASSES WHEN JOURNALISTS ATTEMPT TO EXERCISE THEIR RIGHTS

33. While the NYPD Media Guidelines provide that Police Officers should grant members of the media holding valid press cards the right to cross police and fire lines, in recent years, the NYPD has regularly denied members of the press such

access and has frequently confiscated and/or threatened to confiscate press cards when journalists attempt to exercise their rights. The NYPD engages in this practice even when there is no threat to public safety and the photographers and camerapersons were not interfering with the NYPD's law enforcement functions in any way. The following incidents are examples of such misconduct:

(a) On or about December 1, 1998, AP photographer Adam Nadell was covering an AIDS protest in front of City Hall in Manhattan. The NYPD forced the press into a poorly situated pen that gave them no visual access to the protesters. Accordingly, Mr. Nadell attempted to take a photograph from outside the pen. His press pass was confiscated by the NYPD.

(b) On or about October 18, 1998, the NYPD placed the press in a poorly situated pen at an appearance by baseball player Sammy Sosa, giving the general public better access to Mr. Sosa than the media. When members of the press left the pen, NYPD officers physically pushed them and confiscated the press pass of WNBC cameraman Craig Bush.

(c) On or about June 29, 1997, AP photographer Gino Domenico was standing with the public and taking photographs at a memorial service for Betty Shabazz. Mr. Domenico was not disrupting the service in any way, nor did he present any threat to anyone's safety. Without provocation or justification, several NYPD officers blocked Mr. Domenico's camera and confiscated his press pass.

(d) On or about April 10, 1997, Agence France-Presse photographer Jon Levy was covering a memorial march in New York City [more specific location?]. The NYPD set up a press pen that was so far away from the marchers that it provided no access to the scene of the demonstration. When Mr. Levy refused to enter the designated press pen and told officers that he wanted to stay among the marchers, his press pass was confiscated by the NYPD.

(e) On or about December 12, 1996, Daily News photographer Mike Albans arrived at the scene of a woman trapped under a bus at the corner of 10th Avenue and 47th Street in Manhattan. Mr. Albans attempted to take pictures of the incident from a public sidewalk, which was a considerable distance from the scene and behind police lines, but NYPD officers ordered him to stand further back than the public, at a spot where he had no view of the scene. When Mr. Albans attempted to take photographs from a different position, which was further away and still behind police lines, he was shadowed by a Police Officer who identified himself as Officer Donahue. Officer Donahue physically blocked Mr. Albans' view and prevented him from taking photographs of the scene. When the victim was put into an awaiting ambulance, Mr. Albans made another attempt to photograph the scene from behind police lines when he was accosted by another NYPD officer who physically pushed Mr. Albans' chest twice, stopped him from shooting the scene, and violently yanked his press card from around his neck. At no time was Mr. Albans given access to the scene to take photographs.

34. The foregoing conduct by the NYPD, as illustrated by the above examples, is contrary to the NYPD Media Guidelines and inconsistent with the First Amendment and New York State Constitution.

DEFENDANTS' AWARENESS OF, AND ACQUIESCENCE IN THE POLICY, CUSTOM AND PRACTICE OF DENYING PLAINTIFFS AND OTHER JOURNALISTS THEIR CONSTITUTIONAL RIGHTS TO GATHER THE NEWS

35. Plaintiffs have repeatedly informed Defendants, in person and in writing, of the NYPD's pattern of First Amendment and state constitutional violations against Plaintiffs and other members of the press, citing specific instances of police

misconduct, including but not limited to most of the examples cited above.

36. Despite Defendants' knowledge of the NYPD's policy, custom, and practice of First Amendment and state constitutional violations against Plaintiffs and other members of the press, Defendants have failed to stop the illegal policy, custom, and practice from continuing even though it is within their power to do so.

FIRST CAUSE OF ACTION
(First Amendment)

37. Plaintiffs repeat, reallege and incorporate the allegations in the foregoing paragraphs as though fully set forth herein.

38. The NYPD has followed and continues to follow an unwritten municipal policy, custom, and practice of interfering with Plaintiffs' access to newsworthy events in public and private places by (a) physically blocking cameras and/or visual access to newsworthy events, (b) confining Plaintiffs' photographers and reporters to press pens and other areas that provide no visual access to the scene of newsworthy events, (c) confining Plaintiffs' photographers and reporters to "press pens" or other areas that provide limited visual access to the scene of newsworthy events while the general public is afforded

unfettered access, and (d) arbitrarily confiscating and/or threatening to confiscate the press passes of Plaintiffs' photographers and reporters who try to assert their First Amendment rights.

39. Each of these four practices separately and all of them combined constitute a municipal policy, custom, and practice that has denied and continues to deny Plaintiffs their rights under the First and Fourteenth Amendments of the United States Constitution to gather the news.

40. Defendants Giuliani, Safir, and the City of New York have known of the existence of these illegal policies, customs, and practices, have been asked to remedy them on numerous occasions by various Plaintiffs, and have failed to do so.

41. Defendants Giuliani, Safir, and the City of New York have, on information and belief, directed and, in any event, knowingly countenanced, acquiesced in, condoned, and implicitly encouraged these policies, customs, and practices by failing to take steps necessary to abolish the aforesaid policies, customs, and practices even after repeated requests by Plaintiffs to do so.

42. Defendants' failure to respond to, prevent, or discourage the NYPD's policies, customs, and practices of violating the First Amendment rights of Plaintiffs and other members of the press has caused and continues to cause Plaintiffs' irreparable harm for which Plaintiffs have no adequate remedy at law.

SECOND CAUSE OF ACTION
(New York Constitution)

43. Plaintiffs repeat, reallege and incorporate the allegations in the foregoing paragraphs as though fully set forth herein.

44. The NYPD has followed and continues to follow an unwritten municipal policy, custom, and practice of interfering with Plaintiffs' access to newsworthy events in public and private places by (a) physically blocking cameras and/or visual access to newsworthy events, (b) confining Plaintiffs' photographers and reporters to press pens and other areas that provide no visual access to the scene of newsworthy events, (c) confining Plaintiffs' photographers and reporters to "press pens" or other areas that provide limited visual access to the scene of newsworthy events while the general public is afforded unfettered access, and (d) arbitrarily confiscating and/or threatening to confiscate the press passes of Plaintiffs' pho-

tographers and reporters who try to assert their rights to gather the news under article I, section 8 of the Constitution of the State of New York.

45. Each of these four practices separately and all of them combined constitute a municipal policy, custom, and practice that has denied and continues to deny Plaintiffs their rights under article I, section 8 of the Constitution of the State of New York to gather the news.

46. Defendants Giuliani, Safir, and the City of New York have known of the existence of these illegal policies, customs, and practices, have been asked to remedy them on numerous occasions by various Plaintiffs, and have failed to do so.

47. Defendants Giuliani, Safir, and the City of New York have, on information and belief, directed and, in any event, knowingly countenanced, acquiesced in, condoned, and implicitly encouraged these policies, customs, and practices by failing to take steps necessary to abolish the aforesaid policies, customs, and practices even after repeated requests by Plaintiffs to do so.

48. Defendants' failure to respond to, prevent, or discourage the NYPD's policies, customs, and practices of vio-

lating the rights of Plaintiffs and other members of the press under article I, section 8 of the Constitution of the State of New York has caused and continues to cause Plaintiffs' irreparable harm for which Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray:

(1) That this Court declare that the NYPD has followed an unwritten municipal policy, custom, or practice of interfering with Plaintiffs' access to newsworthy events in public and private places by (a) physically blocking cameras and/or visual access to newsworthy events, (b) confining Plaintiffs' photographers and reporters to press pens or other areas that provide no visual access to the scene of newsworthy events, (c) confining Plaintiffs' photographers and reporters to "press pens" or other areas that provide limited visual access to the scene of newsworthy events while the general public is afforded unfettered full access, and (d) arbitrarily confiscating and/or threatening to confiscate the press passes of Plaintiffs' photographers and reporters who try to assert their rights under the U.S. and New York Constitutions, which policy, custom or practice has been acquiesced in, condoned, and implicitly encouraged by Defendants

in violation of Plaintiffs' rights under the First and Fourteenth Amendments to the U.S. Constitution and article I, section 8 of the Constitution of the State of New York;

(ii) That this Court permanently enjoin all of the Defendants from continuing the foregoing policy, custom, and practice;

(iii) That this Court enter declaratory and injunctive relief necessary and appropriate to remedy Defendants' violations of Plaintiffs' rights under the First and Fourteenth Amendments to the U.S. Constitution and article I, section 8 of the Constitution of the State of New York, including an order:

(a) requiring Defendants to enforce the NYPD Media Guidelines, to bring their existence to the attention of all members of the police force, and to provide a mechanism whereby members of the press can file complaints for guidelines violations and those officers who fail to follow the guidelines will be disciplined;

(b) requiring Defendants to refrain from using pens to segregate the press and from restricting press access unless it is strictly necessary, in cases where no alternatives exist to delineating a crime or accident scene for law enforcement or public order purposes and to ensure that in cases where press access is restricted, the press is permitted access to the most advantageous location, and will in no instance be provided less access than that accorded to the general public.

(c) requiring the establishment of an oversight committee or ombudsman, which is to be granted sufficient power and responsibility to resolve ongoing problems between the press and the NYPD and to effectively monitor the NYPD's compliance with the NYPD Media Guidelines;

(d) enjoining NYPD officers from confiscating press cards without a hearing and determination that there is "good cause" for confiscation due to knowing interference with the NYPD's law enforcement functions;

(iv) That this Court enter an order granting Plaintiffs the costs and disbursements of this action, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

(v) That this Court enter an order granting Plaintiffs such other, further and different relief as the Court may deem just and proper.

Dated: New York, New York
May ___, 1999

CAHILL GORDON & REINDEL
(a partnership including a professional corporation)

By: ______________________________
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Attorneys for Plaintiffs

On September 26, 1957, a tragic accident occurred on an elevated section of the Seventh Avenue subway line at 238th Street in the Bronx. An empty train rammed into the rear of another, killing the motorman. A photographer has made it to the roof of the wreckage for a clear vantage point of the rescue efforts. (Courtesy of the Daily News.)

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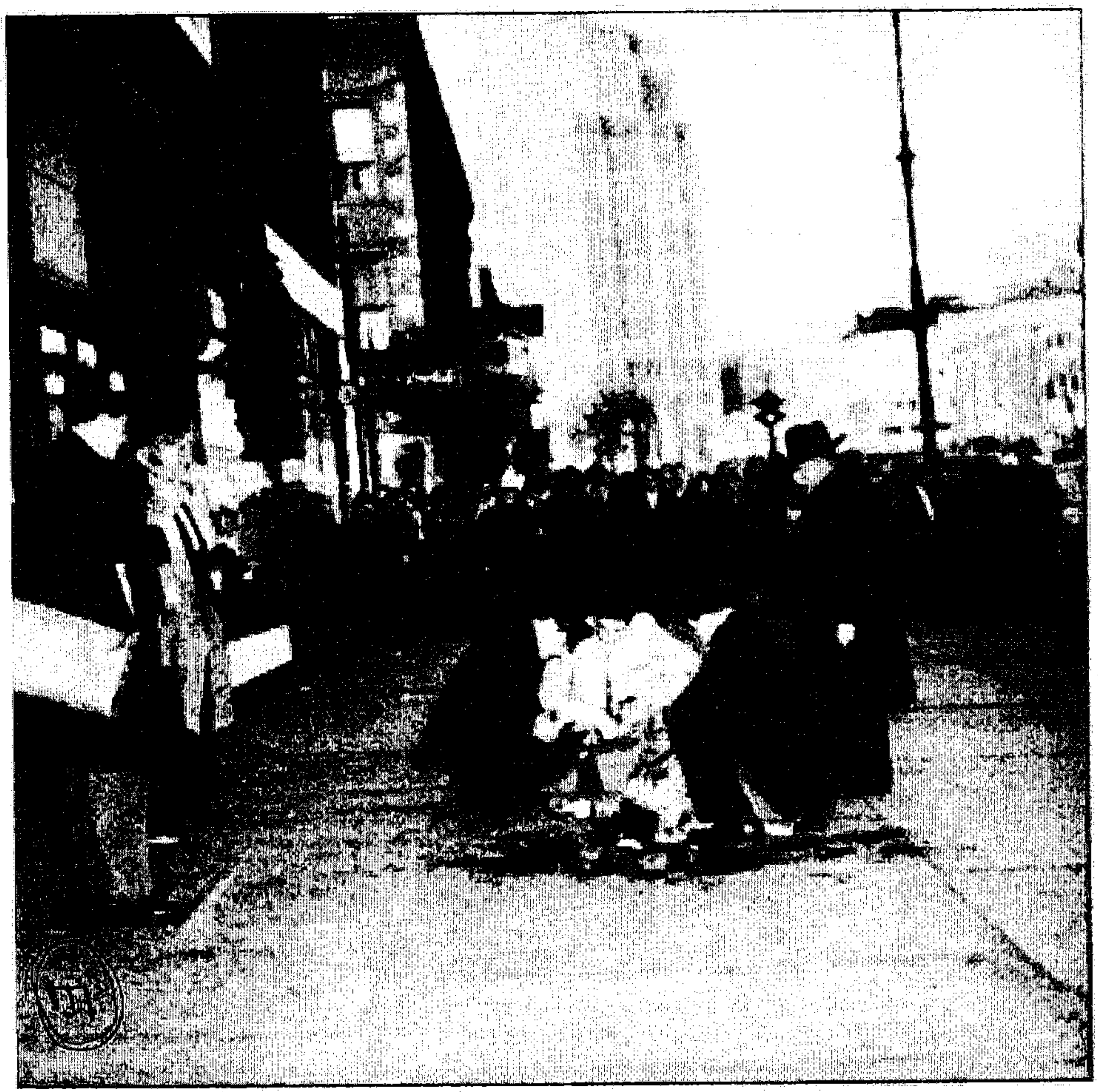

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PATROL GUIDE

Section: Command Operations		Procedure No: 212-49	
INCIDENTS INVOLVING MEDIA REPRESENTATIVES			
DATE ISSUED: [illegible]	DATE EFFECTIVE: [illegible]	REVISION NUMBER:	PAGE: 1 of 2

PURPOSE To cooperate with media representatives by not interfering or allowing others to interfere with media personnel acting in their news gathering capacity.

NOTE *A member of the press with proper credentials may not be excluded from an area where the general public has access.*

PROCEDURE Whenever a member of the service (uniformed or civilian) becomes involved in an incident or confrontation with media personnel or media personnel are assaulted, harassed or their vehicles/equipment are vandalized/damaged at the scene of news events:

UNIFORMED MEMBER OF THE SERVICE

1. Determine if any threat to safety of media representatives exists and take appropriate action.
2. Request response of a supervisory officer.

SUPERVISORY MEMBER

3. Cooperate with and assist media representatives and provide safe access to the scene, if possible.
4. Conduct immediate investigation if member of the media is assaulted, harassed or their vehicle/equipment is vandalized/damaged.
5. Attempt to obtain third party witnesses if confrontation with members of the service or others.
6. Request all parties, including witnesses, if possible, to report to precinct of occurrence for further investigation, when necessary.
7. Notify the Office of the Deputy Commissioner, Public Information without delay.

NOTE *The Office of the Deputy Commissioner, Public Information, is available 24 hours a day, 7 days a week for consultation and/or response to incidents involving the media. Members of the service are required to immediately notify the Deputy Commissioner, Public Information of any incident involving the media, regardless of the outcome of that incident.*

DESK OFFICER

8. Notify:
   a. Commanding officer/duty captain
   b. Lieutenant platoon commander
   c. Operations Unit.

LIEUTENANT PLATOON COMMANDER

9. Respond to command, if in the field, and under the supervision of the commanding officer/duty captain, conduct investigation of incident.

NOTE *The commanding officer/duty captain will perform the duties of the lieutenant platoon commander if the platoon commander is unavailable.*

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PATROL GUIDE

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LIEUTENANT PLATOON COMMANDER (continued)

10. Prepare report on **Typed Letterhead** containing details of incident and results of investigation and forward to:
    a. Chief of Patrol/bureau chief concerned
    b. Borough commander concerned
    c. Commanding Officer, Public Information Division
    d. Command file.

NOTE *The Office of Deputy Commissioner – Public Information will maintain a central repository of all reports received of incidents involving news media representatives.*

11. Forward supplementary report, if necessary.

COMMANDING OFFICER/ DUTY CAPTAIN

12. Respond to command and supervise the investigation and preparation of the report by the lieutenant platoon commander.

ADDITIONAL DATA

Members of the service will not interfere with the videotaping or the photographing of incidents in public places. Intentional interference such as blocking or obstructing cameras or harassing the photographer constitutes censorship. Working Press Cards clearly state the bearer "is entitled to cross police and fire lines." This right will be honored and access will not be denied. However, this does not include access to interior crime scenes or areas frozen for security reasons.

In order to cooperate more fully with members of the news media and provide them with access to cover newsworthy events, the following guidelines will be adhered to unless safety interests or proper performance of police duties require otherwise:

a. To the extent it is feasible to do so, the media's access to demonstrations on private property will not be impeded by the Department.

b. The media will be given access as close to the activity as possible, with a clear line of sight and within hearing range of the incident.

c. When incidents spill over or occur on private property, members of the media will not be arrested for criminal trespass, unless an owner or representative expressly indicates that the press is not to be permitted to enter or remain on the property.

d. If the ranking officer at the incident determines that press access must be restricted in certain circumstances (i.e., in order for the Department to carry out its law enforcement functions), he retains the discretion to do so.

RELATED PROCEDURES

Information Concerning Official Business of Department (P.G. 212-76)
Release of Information to News Media (P.G. 212-77)

FORMS AND REPORTS

Typed Letterhead

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT FILED JUN 21 1977 S.D. OF N.Y.

RICHARD BLACK; ALAN SALISBURY; WILLIE HAMILTON; EDWARD S. RICKARDS, J.R., and JAMES RANOCK, for themselves and all others similarly situated,

Plaintiffs,

-against-

73 Civ. 5283 (JMC)

MICHAEL CODD, individually and as Police Commissioner of the City of New York; Patrolman PAUL A. BERT; Patrolman ROBERT CRUZ; Lieutenant DANIEL DILLON; NEW YORK CITY POLICE DEPARTMENT; CITY OF NEW YORK,

Defendants.

STIPULATION AND ORDER of Dismissal

MICROFILM JUN 21 1977

It is stipulated by and between the attorneys for the parties herein that it is the policy of the New York City Police Department and the defendants that when a person (or persons) is detained, stopped or arrested in public areas, a person or persons not involved in the conduct for which the first person is stopped or arrested may remain in the vicinity of the stop or arrest as an onlooker or onlookers, subject to the safety of the person stopped, the third persons, the general public, and officers of the Police Department, and to provisions of law e.g. P.L. §195.05. The provisions of this order are intended solely as a settlement of the above entitled litigation, and do not constitute an admission that the above policy has been violated by defendants, or any of them. In the following provisions, the term "officer" refers to New York City police officers, agents of the defendants.

1. A person remaining in the vicinity of a stop or arrest (herein after an "onlooker") shall not be subject to arrest for violation of Penal Law §195.05 unless the officer has probable cause to believe a violation of Section 195.05 exists.

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2. None of the following constitutes probable cause for arrest or detention of an onlooker unless the safety of officers or other persons is directly endangered or the officer reasonably believes they are endangered or the law is otherwise violated:

   (a) Speech alone, even though crude and vulgar;

   (b) Requesting and making notes of shield numbers or names of officers;

   (c) Taking photographs;

   (d) Remaining in the vicinity of the stop or arrest.

3. Whenever an onlooker is arrested or taken into custody, the arresting officer shall report the action to the supervisor at the station house or other place where the person is taken. Section 110-2 and 110-7 of the Patrol Guide of the New York City Police Department (copies attached), shall be complied with.

4. Defendants shall notify all officers and other employees of the Police Department of the terms of this stipulation by appropriate department order within 60 days of the entry of this order. Such order shall embody the terms of paragraphs 1 through 3 of this order. Area commanders will be informed that the basis for the said departmental order is the settlement of this litigation and that the terms of this order are part of the departmental order. Area commanders shall inform precinct commanders of the existence of this order.

5. Costs, disbursements and attorneys' fees are waived by all parties and their attorneys.

The above provisions of this order shall and the same hereby do constitute the final judgment of this court upon the controversy between defendants, plaintiffs and the plaintiff class. In all other respects, the claims of the plaintiffs are dismissed with prejudice.

Dated: New York, New York
June 1, 1977

Paul G. Chevigny
PAUL G. CHEVIGNY
ALAN H. LEVINE
Attorneys for Plaintiffs

W. BERNARD RICHLAND
By: [signature]
CORPORATION COUNSEL
Attorney for Defendants

SO ORDERED: [signature] 6/1/77

John M. Cannella
U.S.D.J.

A TRUE COPY ON
THIS DATE 7-19-12
BY [signature]
( ) Clerk
(✓) Deputy

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

MICHAEL D. HESS
Corporation Counsel

(212) 788-0800

July 29, 1999

Floyd Abrams, Esq.
Cahill, Gordon & Reindel
80 Pine Street
New York, New York 10005

Dear Mr. Abrams:

In light of our discussions to resolve the issues identified by your clients regarding police interaction with members of the media, and to ensure that access is provided to working members of the press to the fullest extent possible, the New York City Police Department ("NYPD") is reaffirming and implementing the following procedures:

1. The Police Commissioner will issue a formal Policy Statement no later than August 12, 1999, which will, as discussed with your clients, reaffirm the NYPD's commitment to Patrol Guide Sections 116-51 and 116-53. As with all policy statements, this will become a permanent record of the NYPD and will be binding on all members of the Department.

2. The Policy Statement will be distributed to the Department's Executive Staff within three (3) days of its issuance. Additionally, an official message will be transmitted via the Finest Message System which will direct that the Policy Statement be read at ten consecutive roll calls and will further direct Members of the Service to the relevant provisions of the Patrol Guide with an indication that such provisions should be reviewed and adhered to strictly. (The relevant provisions of PG - 116-51 and 116-53 will be transmitted in their entirety).

4. The Police Academy will amend and amplify existing training curricula to reflect the provisions of the Policy Statement.

5. The NYPD, through the auspices of the Office of the Deputy Commissioner for Public Information, ("DCPI") will continue to have a representative available 24 hours a day, seven days a week to accept telephone calls from the press or Members of the Service. Additionally, DCPI will track all Unusual Occurrence Reports prepared pursuant to Patrol Guide Section 116-53 in a system which will

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be developed for such purpose. To the extent information is available and to the extent it is practicable, DCPI will provide notice of receipt of such report to the relevant editorial manager. Such information will be made available to the public upon request.

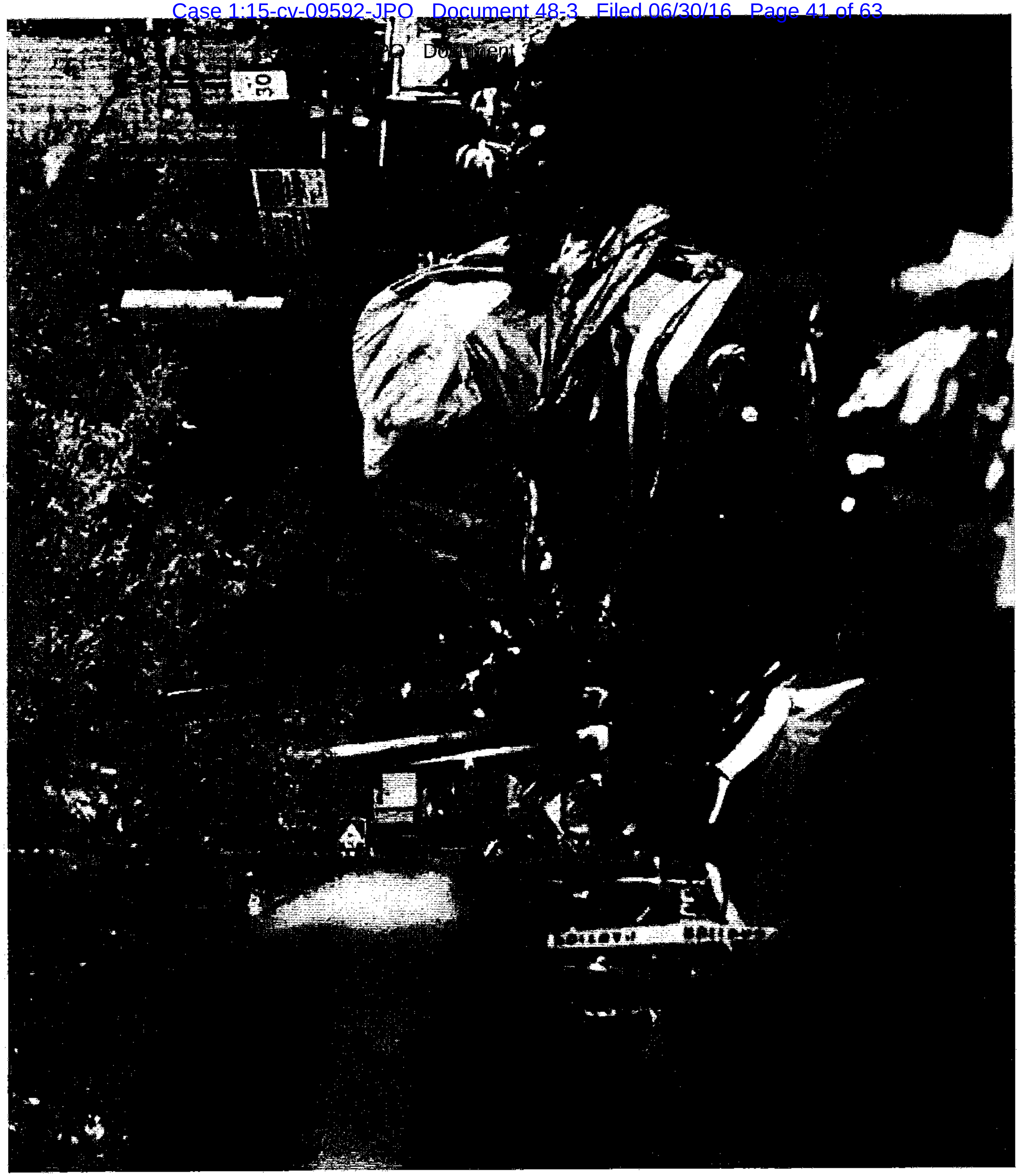
6. The Police Commissioner and myself will meet with you and your clients six (6) months from the date of this letter to evaluate any issues arising from police - media interaction. Of course, in the event that issues arise that should be addressed before that period of time, we will make ourselves available to you and your clients.

Allow me to thank you and your clients for the professional and effective manner in which this situation has been handled. By resisting the temptation to sensationalize the issues raised in connection with this matter, your clients have demonstrated their commitment to moving forward in their relationship with the NYPD. In the spirit of this agreement, I am pleased that your clients are continuing to exercise such professionalism and restraint. As we have discussed, although strong positions can be taken on behalf of the actions of each of our clients, it is my view that the goal of improving relations between our respective clients has been greatly served by the work we have done in putting those disagreements behind us.

As always, if I can be of any assistance, please do not hesitate to call upon me.

Very truly yours,

Michael D. Hess



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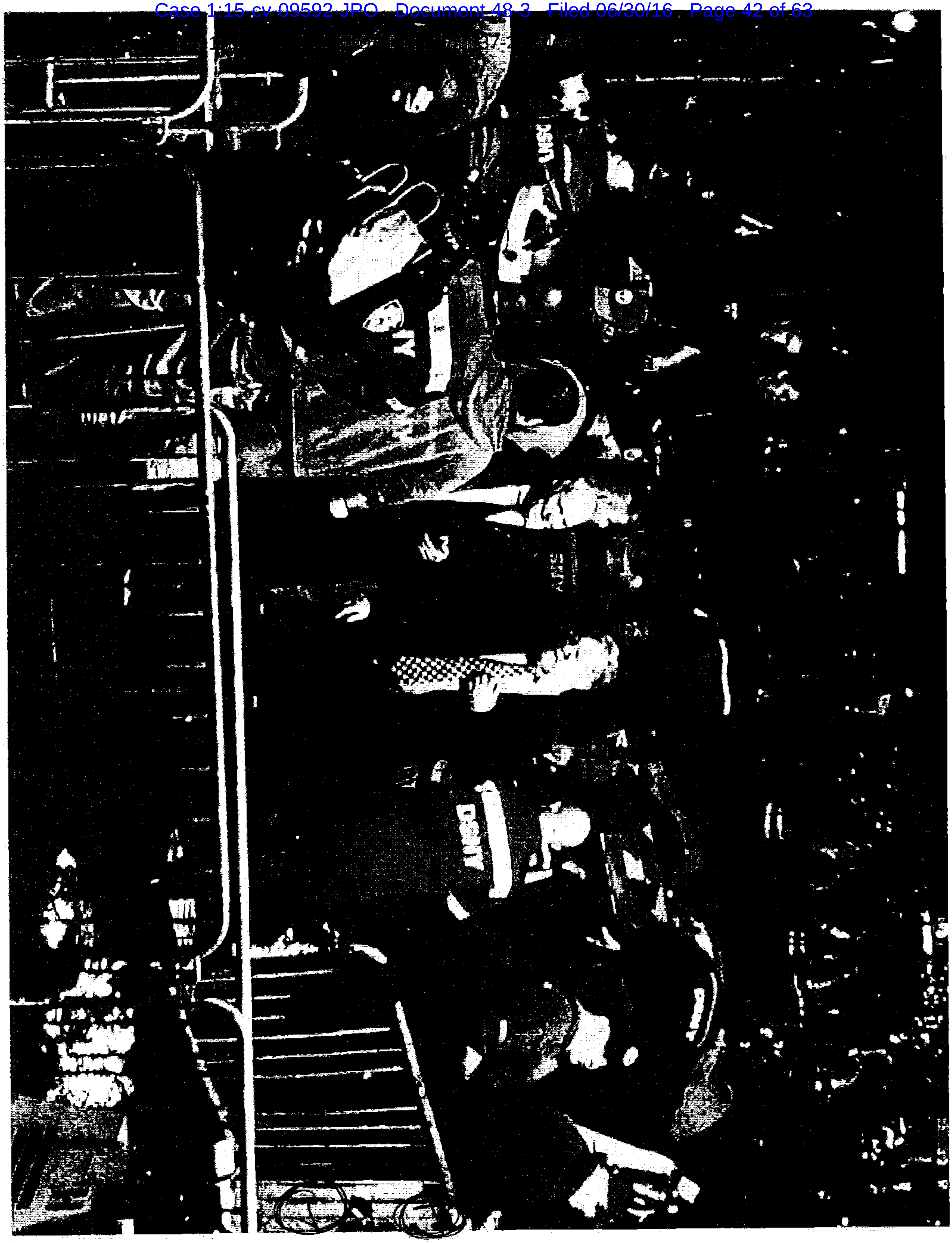

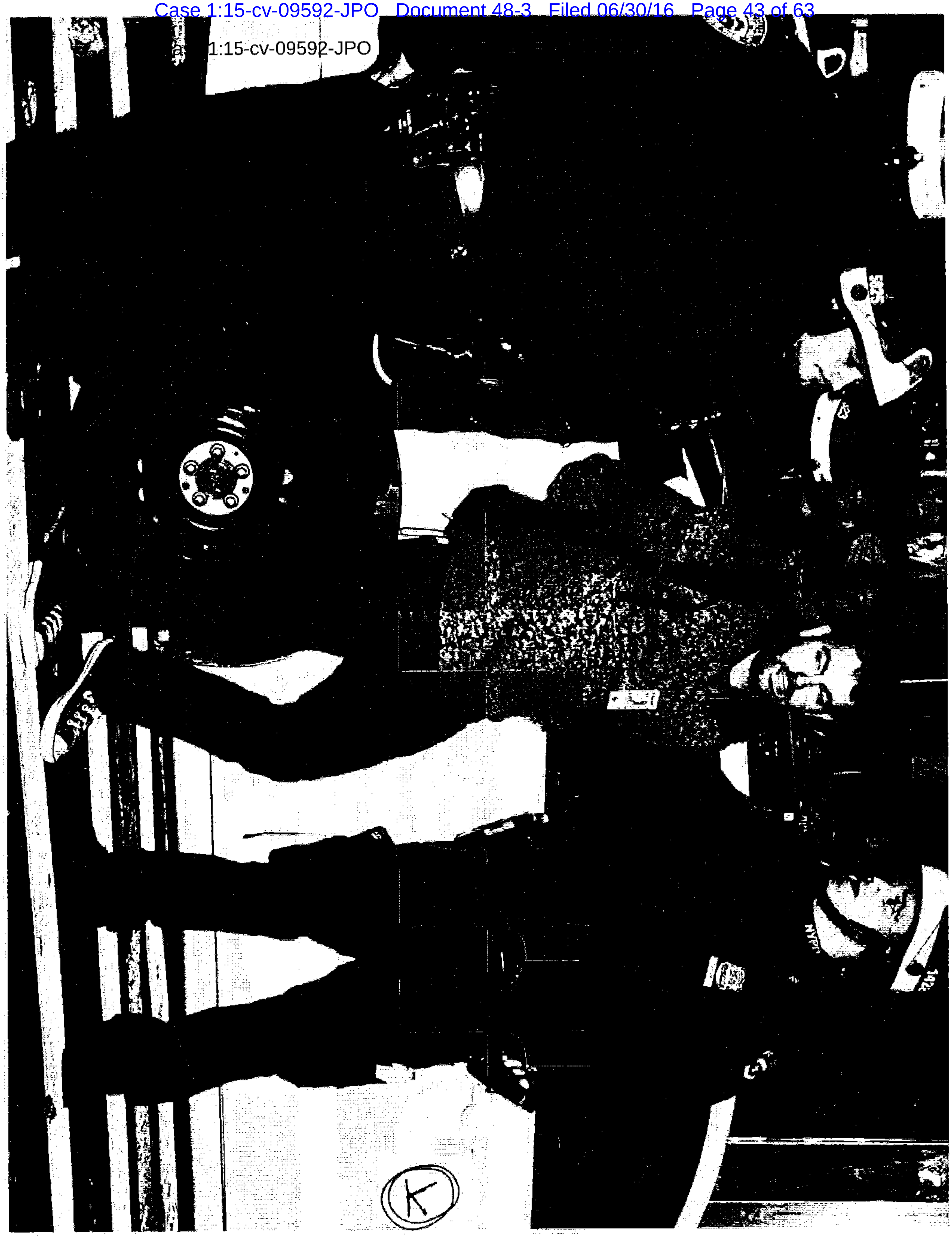
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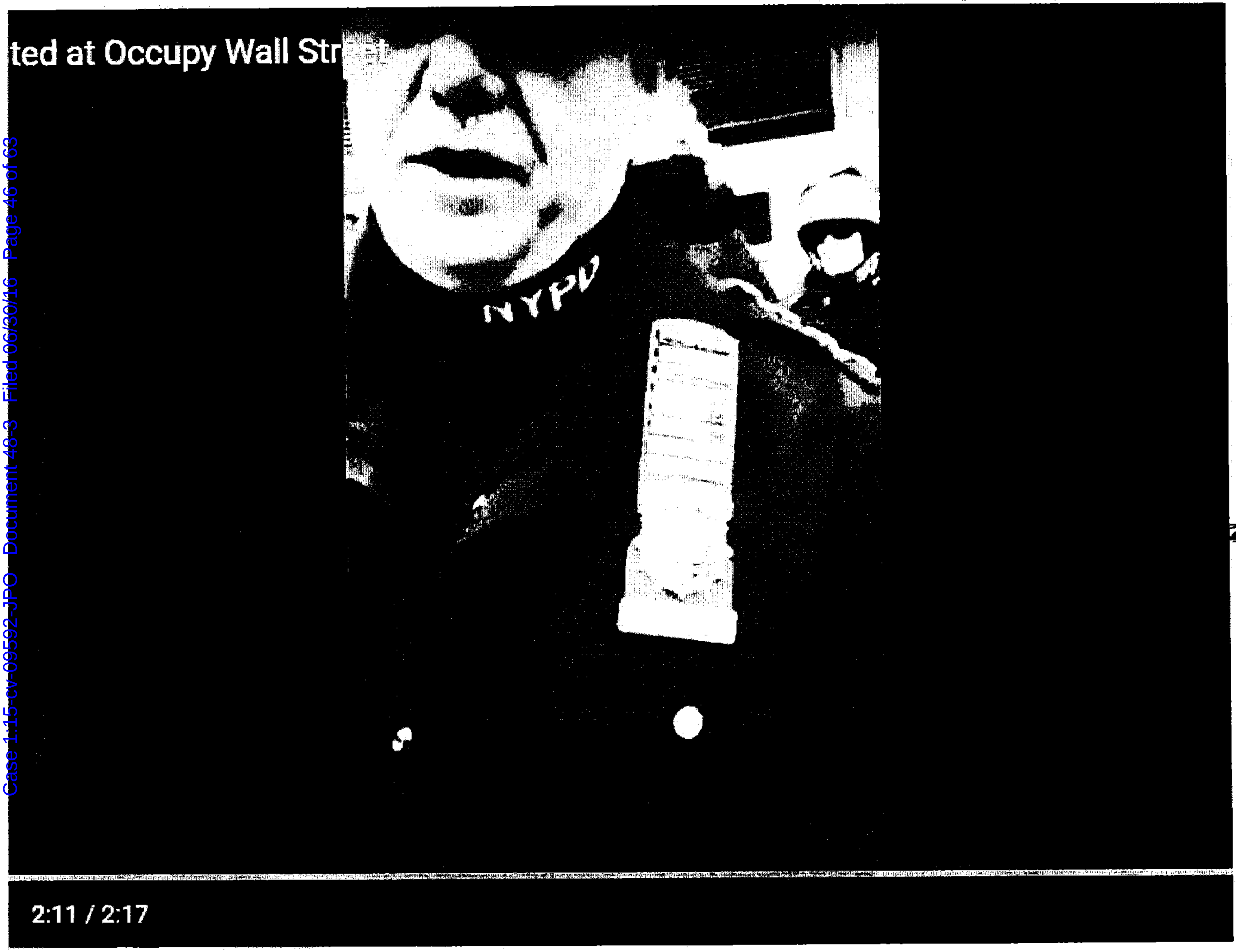
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NYPD
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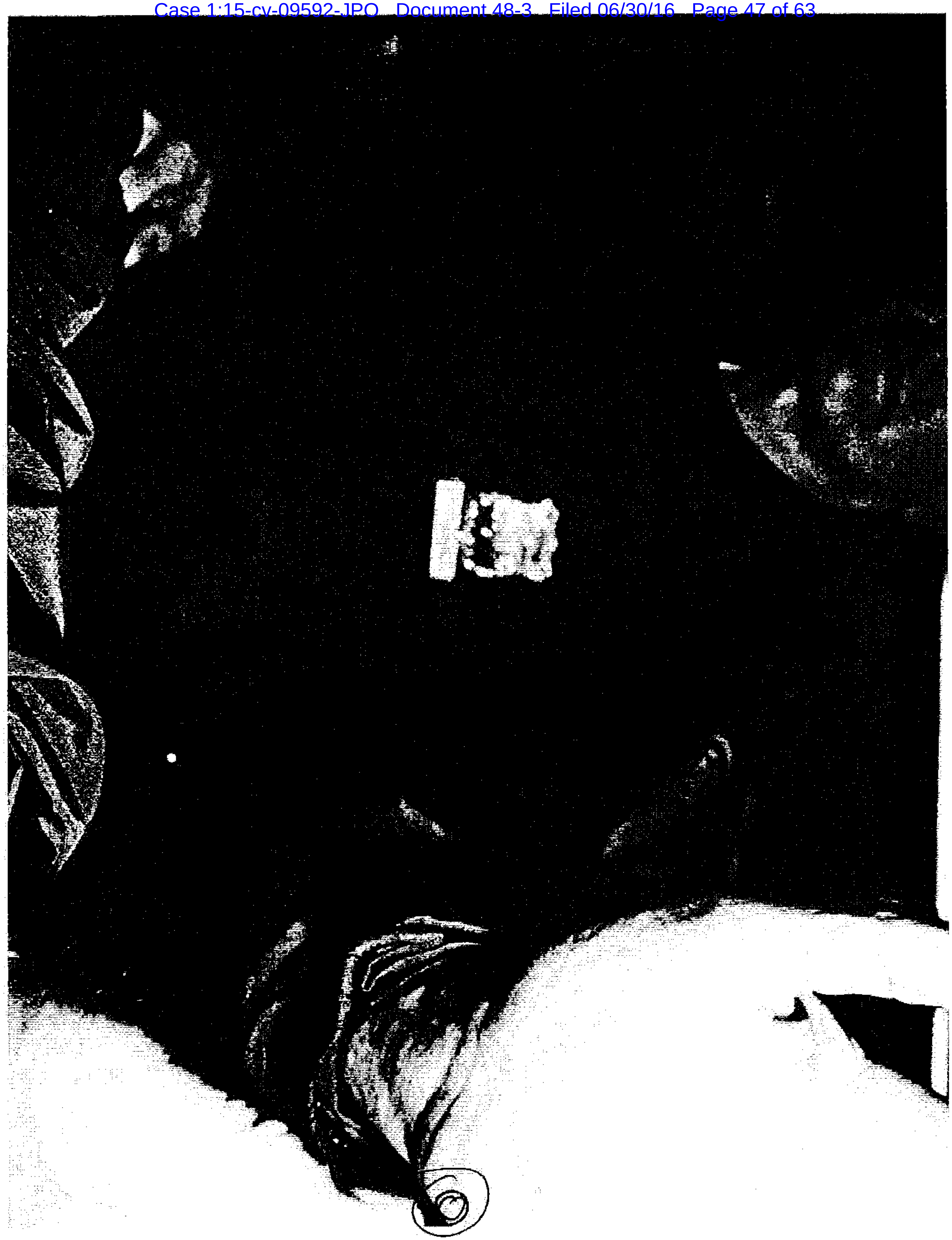

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National Press Photographers Association, Inc.
The Society of Visual Journalists
1100 M&T Center • 3 Fountain Plaza
Buffalo, NY 14202
Phone: 716.566.1484 • Fax: 716.608.1509
lawyer@nppa.org

VIA EMAIL

October 1, 2012

Commissioner Raymond W. Kelly
New York Police Department
1 Police Plaza
New York, NY 10007

Re: Recent Events Involving Police Press-Relations

Dear Commissioner Kelly,

As a follow-up to our meeting on November 23, 2011, after which you issued your FINEST message "to remind members of the service of their obligations to cooperate with media representatives acting in a news-gathering capacity at the scene of police incidents," I am writing on behalf of the organizations listed below in order to address recent events involving members of the press and your department.

On August 4, 2012, New York Times photographer Robert Stolarik was interfered with and arrested in the Bronx while taking pictures of an arrest which was part of the "stop and frisk" program. Correspondence was exchanged between George Freeman, DCPI Paul Browne, ADCLM Deborah Zoland, ADCLM Thomas Doepfner and I regarding this matter. After much effort by all parties his equipment was returned a week later and his credentials were returned on 8/23/12. Despite our repeated assertions that Mr. Stolarik's arrest was completely unwarranted, the charges of obstruction of governmental administration and resisting arrest remain; and we have yet to receive the report from the IAB investigation in which Mr. Stolarik fully cooperated. We are also deeply concerned because his arrest appears to be in direct contravention of a 6/2/77 Stipulation and Order in the U.S. District Court for the Southern District of New York in the matter of *Black v. Codd*, which was incorporated verbatim into the NYPD Patrol Guide in 2000 at PG 208-03 under the heading "Observers at the Scene of Police Incidents."

On Monday, September 17, 2012, in violation of both the FINEST message and Patrol Guide directives, members of the service, including command and supervisory personnel, interfered with, assaulted, detained and in some cases arrested members of the media who were on a public street covering the anniversary of the Occupy Wall Street protests.

According to reports from the scene along with viewed videos, a police lieutenant repeatedly told journalists, including many with NYPD-issued credentials, they could not be on a section of Broadway just north of Wall Street. He was heard saying "This is a protest" and once again that photographers were not permitted to be there. He also can be heard telling a group of reporters and photographers, including several with NYPD-issued credentials, that they could not continue to use cameras in a public area.

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Officers then used batons to shove groups of credentialed journalists north on Broadway and also threatened another group of credentialed journalists with arrest if they did not leave the sidewalk on the west side of Broadway. This occurred at the same time police allowed members of the public access to that area.

In another incident on the same day, a reporter with NYPD-issued press credentials was told by an officer that he could not pass a barricade and walk down a sidewalk because "the stock exchange is not accepting media today." There is also video showing a private stock exchange guard manning a police barricade at which he checked IDs. It was apparent that police had abrogated their authority and allowed this person to determine who was eligible to walk along a public sidewalk at the same time denying access to members of the press. While we commend some command staff for intervening on behalf of credentialed media, there were far too many instances to be ignored where proper procedures were not followed.

It is our strongly asserted position that while the press may not have a greater right of access than the public, they have no less right either.

What is also of grave concern is the fact that although DCPI issued press credentials may be required for admission to certain press events; it is a blatant violation of the First Amendment for officers to prevent non-credentialed members of the media from gathering and disseminating news on a street where the public has not been denied access. We strongly object to any journalists being harassed, intimidated and arrested when clearly displaying press identification solely because they were not considered to be "properly credentialed" by the police.

As the Supreme Court noted in *Branzburg v. Hayes*, 408 U.S. 665 (1972) "Liberty of the press is the right of the lonely pamphleteer who uses carbon paper or a mimeograph just as much as of the large metropolitan publisher who utilizes the latest photocomposition methods." In *Von Bulow v. Von Bulow*, 811 F.2d 136 (2d Cir. 1987), the U.S. Court of Appeals for the Second Circuit, similarly stated that "an individual successfully may assert the [New York] journalist's privilege if he is involved in activities traditionally associated with the gathering and dissemination of news, even though he may not ordinarily be a member of the institutionalized press." In that same vein, the U.S. Court of Appeals for the First Circuit noted that such constitutional protections "cannot turn on professional credentials or status." *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011).

Given these ongoing issues and incidents we believe that more is needed in order to improve police-press relations and to clarify the ability of credentialed and non-credentialed journalists to photograph and record on public streets without fear of intimidation and arrest. Therefore, we urge you meet with us once again so that we may help devise a better system of education and training for department members starting from the top down.

Thank you for your anticipated cooperation.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
General Counsel

cc: Paul J. Browne, DCPI (via email)

***On behalf of*:**

George Freeman, The New York Times
Matthew Leish, The New York Daily News
Karen Kaiser, The Associated Press
Shmuel Bulka, Thomson Reuters
Craig Lindner & Jason Conti, Dow Jones
Larry Seary, New York Press Club
Diane Kennedy, New York Newspaper Publishers Association
David Pokress, New York Press Photographers Association
Eugene Mopsik, American Society of Media Photographers
Bruce Brown, Reporters Committee for Freedom of the Press
Kathleen Kirby, Radio Television Digital News Association
Sonny Albarado, Society of Professional Journalists
Carlos Lauría, Committee to Protect Journalists

The New York Times Company

David McCraw
Vice President and
Assistant General Counsel

May 21, 2014

620 Eighth Avenue
New York, NY 10018

mccraw@nytimes.com
tel 212 556-4031
fax 212 556-4634

VIA FEDERAL EXPRESS

Mr. Steve Davis
Deputy Commissioner for Public Information
New York City Police Department
1 Police Plaza
New York, NY 10038

Re: Lt. Eugene Whyte Incident

Dear Commissioner Davis:

I am writing to raise our concerns about an incident that occurred on Friday, May 16, 2014 involving Lt. Eugene Whyte, who singled out one of our photographers and interfered with his journalistic work at the scene of a crime. I ask for the opportunity to discuss this matter with you and Lt. Whyte so we can avoid similar incidents in the future.

Robert Stolarik, a freelance photojournalist, was shooting pictures for The Times at an Upper East Side location where a robbery suspect had been shot and killed. Mr. Stolarik was not inside an area designated as a crime scene that was "off-limits." Yet, Lt. Whyte ordered Mr. Stolarik to put down his camera and leave the location. A review of a video of the incident shows that Mr. Stolarik was standing in a public place. Additionally, at least one other photographer was actually closer to the scene of the shooting than Mr. Stolarik and that reporter was not restricted from newsgathering.

It goes without saying that a journalist, like any other citizen, has a right to take photographs of public events while standing in a public place. Why Lt. Whyte decided to deny Mr. Stolarik that right is a mystery, but whatever his reason, his actions were an unacceptable interference with the work of a journalist and appear to contravene the Police Department's own Patrol Guide.

More than that, Lt. Whyte's targeted behavior towards Mr. Stolarik – including comments on how he should "be a gentleman" – is a disservice to the role DCPI has traditionally played: to help news organizations cover stories of importance to New Yorkers and to work with the press to prevent interference by junior officers in the field.

I understand the need of officers to control access to crime scenes and the tensions that can arise when the public is present at a scene. But nothing like that was the case on Friday. For whatever reason, Mr. Stolarik became the focus of Lt. Whyte's displeasure. Mr. Stolarik asserted his legal rights, and he then found himself prevented from continuing to do his job.

If there is something I am missing about the chain of events, I would be glad to hear it. But these kinds of confrontations should not occur. The Patrol Guide makes clear the obligations of officers in dealing with the press at a crime scene. The Guide was not followed on Friday, and it should have been.

Sincerely,

David E. McCraw

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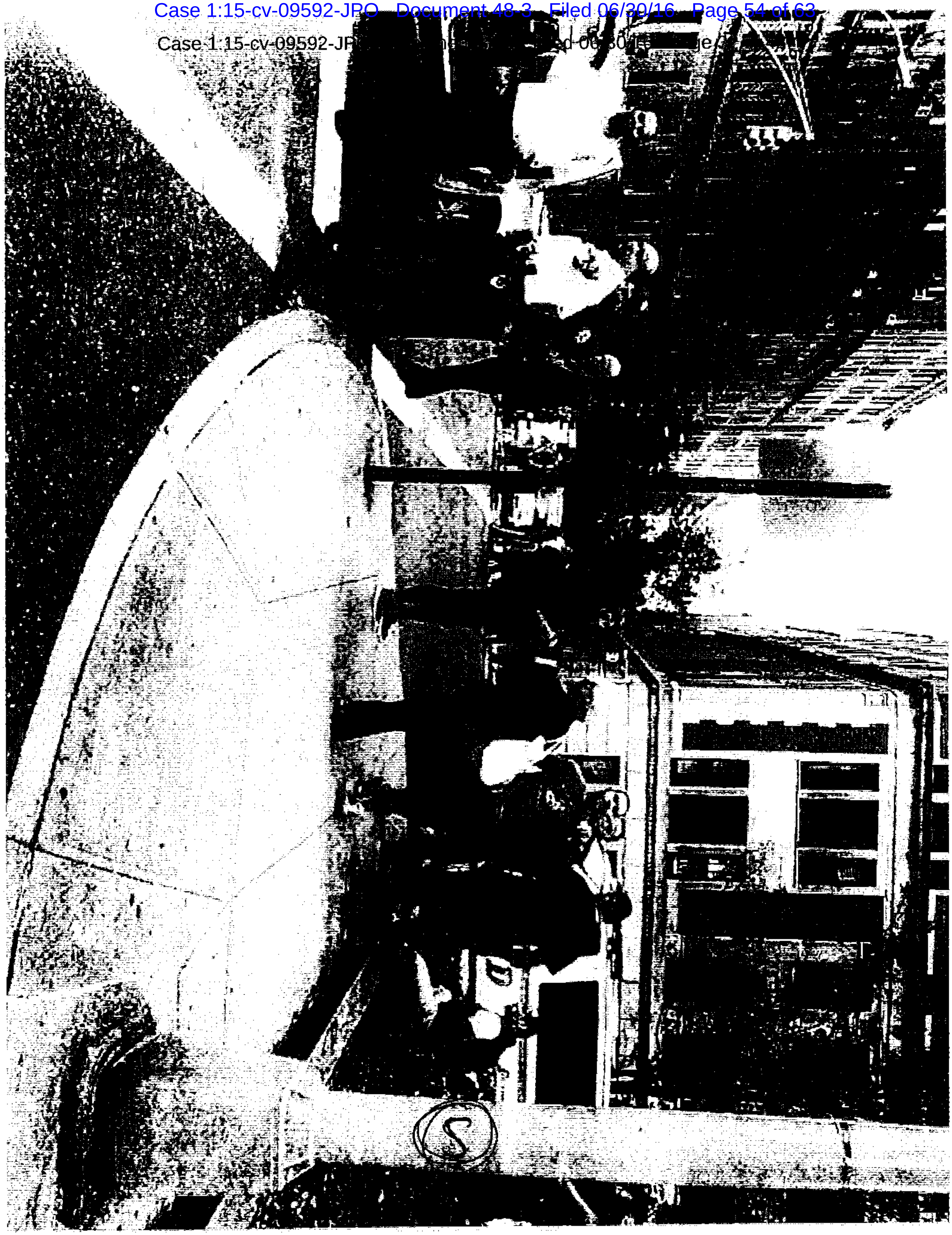

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NYPD

Photographer Andrew Gombert of EPA is knocked to the ground by the police during an Occupy Wall Street demonstration in New York November 17, 2011. Hundreds of Occupy Wall Street protesters marched through New York's financial district toward the stock exchange on Thursday to protest economic

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DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000

CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

October 29, 2014

Jeffrey Emdin
499 7th Avenue
Suite 12N
New York, NY 10018

Re: People v. JASON NICHOLAS
Docket No. 2014NY071565

Dear Mr. Emdin:

I recently had an opportunity to meet with the eye witnesses in this case. Based on those meetings, a review of the Detective's "DD5's" and the related 911 call, I am making the following disclosures:

1. An anonymous witness called 911 and made the following statement, in substance, to the 911 representative:
   a. "Someone is fighting at 93rd and Park Avenue. It's a police officer I think and a guy with a bicycle, but he's asking me to contact the police. It's 2 men. They are in the middle. No, I don't see any weapons. No, no one needs an ambulance. Two male white. One with a Cadillac SVU. He's hitting him in the grass. I don't know. He's going to kill him. I don't know what is happening. One male is wearing a black suit and came from a black Cadillac SUV. Other man was on a bicycle. They were fighting. The male on the bicycle is wearing beige shorts and white shirt. And right now the guy in the suit is hitting him. Oh my god, he's going to kill him. No weapons, with his hands, he's strangling him."

2. A detective reached out to the above anonymous caller and that caller made the following statement to the detective:
   a. "I was walking from the east side to the west side of East 93rd Street on Park Avenue when I saw a black Cadillac. The truck is the big one. The truck pulled into an angle at the corner blocking a bike rider. The driver of the vehicle exits the [illegible]. He was a white guy, bald and tall. He was wearing a navy blue suit. He grabbed the rider of the bike and dragged him to the median of Park Avenue. He held him down to the ground

and was strangling him. Both guys asked for us to call the police. I called the police and they came fast."

3. During a phone conversation and a separate meeting with Joshua Holland, (518) 269-8533, he stated, in substance, to me:
   a. He was walking northbound on the east side of Park Avenue, crossing 93rd Street when he heard shouts (he could not hear what was being said). He turned and saw, who he now knows to be Mr. Crowe, either finishing getting out of his SUV or out of his SUV. He further observed Mr. Nicholas to be about 2 feet from the driver's door and he believes Mr. Nicholas was still on his bike. The car was at an angle in the intersection, facing a bit northwest. He did not observe either party swing at each other at that time and did not see Mr. Nicholas swing his bike at Mr. Crowe. Mr. Holland says he was about 3 feet away, on the median. The first thing Mr. Holland saw was Mr. Crowe grabbing Mr. Nicholas, who was on his bike and somehow ended up off his bike (Mr. Holland was not sure if Mr. Nicholas was pulled off or jumped off his bike). Mr. Crowe began shouting at Mr. Nicholas "I'm a cop. I'm a cop. You're under arrest." Mr. Crowe shouted to everyone else, "I'm a cop. Call the police." Mr. Holland further observed Mr. Crowe to have Mr. Nicholas around the neck or in a bear hug, and Mr. Nicholas was trying to push Mr. Crowe off. Mr. Crowe was holding Mr. Nicholas' shirt to keep him from getting away and Mr. Nicholas kept trying to push away. Mr. Holland observed Mr. Crowe and Mr. Nicholas "grappling" and then go down together in the median. He observed Mr. Crowe "[bring] Mr. Nicholas to the ground to control him." At that point, Mr. Crowe was on top of Mr. Nicholas and Mr. Nicholas stated in substance "You didn't show a badge. Where' your badge?" Mr. Holland also observed Mr. Crowe punch Mr. Nicholas in the face once during their struggle. He observed that while the two were on the ground Mr. Nicholas had a straight arm trying to push Mr. Crowe off and Mr. Crowe had his forearm in Mr. Nicholas' neck. Mr. Holland said this struggle on the ground with the straight arm and forearm lasted about 3 to 4 minutes and about half way through this period is when he observed Mr. Crowe drop one punch on Mr. Nicholas' face; at that time several witnesses said "Get off him. There's no reason to punch him." Mr. Holland said he never saw Mr Nicholas punch Mr. Crowe and that the only punch that was thrown was by Mr. Crowe. Mr. Holland [illegible] the entire incident. Mr. [illegible]

badge and he seemed to be defending himself against a citizen with no authority. Mr. Holland did not see what happened to Mr. Nicholas' bike.

4. In a meeting with Jennifer Flanagan, (508) 785-5912, she stated, in substance, to me:
   a. She was on 93rd Street, crossing Park Avenue, at the median, when she observed a black SUV parked or stopped at the light and a bicyclist. She saw the SUV "move a little, like it was ready to go" and almost hit the bicyclist. She saw the bicyclist smack the top of the SUV as a "hey, I'm here." Ms. Flanagan also heard the bicyclist yelling that the SUV ran over his foot; Ms. Flanagan did not see that happen. She saw the driver get out of the SUV and say "You're under arrest." The driver grabbed the bicyclist's arms and the two men started to have a dispute. The bicyclist was trying to pull his arms away. The driver pushed the bicyclist into the median where Ms. Flanagan was standing and the traffic started to go again. Ms. Flanagan was about 6 feet or less away from the two men. Ms. Flanagan heard the driver keep saying he's a cop and you're under arrest. She heard the bicyclist ask the driver to show I.D. and the driver telling him he doesn't have to. Ms. Flanagan saw that somehow the two men ended up in the flowers at the median with the driver on top and she heard one of the men say to call 911, but she is not sure which one; Ms. Flanagan called 911. Ms. Flanagan never saw either man punch the other, only saw them shoving each other. Ms. Flanagan did not see either of the men pulling on or choking each other using the other man's clothing. Ms. Flanagan did observe the driver holding the bicyclist down with his forearm. Ms. Flanagan did not see what happened to the bicyclist's bike. She did not see any injury to either man. Ms. Flanagan heard the bicyclist yell at the driver that the driver ran over the bicyclist's foot, and heard the driver say, "what are you talking about?"

If you have any questions, please feel free to contact me at 212 335-3021.

Post #

S/mesion of 93rd Park
Till Police Arrived &
placed under Arrest
2130 LT Whyte of
DCPI Taken possession
of press pass.
2315 Dect Interviewed
By Det. Adorno, Miguel
33 PDU 905657.
witness by PO Murphy.
- Arrest # M14822273
61 # 5862
Aided # [illegible] 1357

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PATROL GUIDE

Section: Command Operations		Procedure No: 212-58	
FIRE			
DATE ISSUED 08/01/13	DATE EFFECTIVE 08/01/13	REVISION NUMBER	PAGE 1 of 2

PURPOSE To protect life and property and assist the Fire Department.

PROCEDURE Upon arriving at the scene of a fire:

UNIFORMED MEMBER OF THE SERVICE

1. Send an alarm or make sure one has been sent.
2. Park RMP car to prevent interference with fire fighting operation.
3. Direct responsible person to remain in front of location to direct fire apparatus if fire is not in view.
4. Warn and assist occupants in evacuation of building.
5. Take other action required by situation.

UPON ARRIVAL OF FIRE APPARATUS

UNIFORMED MEMBER OF THE SERVICE

6. Establish police lines beyond the fire apparatus and hydrants in use.
   a. Establish police lines behind the building beyond fire operations, if necessary.

PATROL SUPERVISOR

7. Supervise members of the service.
   a. Notify desk officer if fire is suspicious and request detectives concerned.
8. Immediately assign uniformed members of the service to direct and control responding emergency vehicles to allow free access to affected area.
   a. Ensure that fire hydrants remain accessible for use.

UNIFORMED MEMBER OF THE SERVICE

9. Permit only the following persons or vehicles to enter fire lines:
   a. The Mayor
   b. Members of governmental agencies in performance of duty
   c. Employees of public service corporations in the performance of emergency duties
   d. Persons holding unexpired:
      (1) Working Press cards
      (2) Fire Line cards signed by the Fire Commissioner
   e. The Mayor's car
   f. Police and Fire Department vehicles
   g. Ambulances
   h. Public service corporation vehicles for duty in connection with the fire
   i. City agency vehicles for duty in connection with the fire
   j. U.S. Mail vehicles
   k. Prison vans transporting prisoners.
10. Record following information in **ACTIVITY LOG (PD112-145)**:
    a. Time and date of fire
    b. Part of premises in which fire occurred
    c. Type of building and number of stories
    d. Address of building

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NIFORMED EMBER OF IE SERVICE ontinued)

e. Name and address of building owner
f. Name and address of premises occupant
g. Number of persons injured, if any
h. Cause of fire, extent of damage, and any suspicion of arso (obtained from fire officer in charge)
i. Any dangerous condition resulting from the fire.

11. Prepare **COMPLAINT REPORT WORKSHEET (PD313-152A)** if th fire is suspicious.

ESK OFFICER

12. Notify Operations Unit and borough command if:
    a. Injury or death occurs
    b. Three alarms or more
    c. Unusual type of fire
    d. Cause of fire is suspicious
    e. Forced entry by Fire Department
    f. Relocation of tenants required.
13. Review **COMPLAINT REPORT** if prepared.

)RMS AND :PORTS

ACTIVITY LOG (PD112-145)
COMPLAINT REPORT WORKSHEET (PD313-152A)
COMPLAINT REPORT (PD313-152)